



## FACT SHEET ON REPRESENTING CLIENTS BEFORE YOUR BOARD OR COMMISSION

The City's Ethics Ordinance includes laws that prohibit City Officials from influencing municipal decisions when those decisions are substantially likely to have a material financial effect on their economic interests. Such interests could include the clients of a person serving on a City board or commission. Accordingly, this Fact Sheet is designed to offer general guidance to board and commission members who have clients with matters that come before their respective board or commission. Keep in mind that the information offered in this Fact Sheet should not be considered a substitute for the actual language contained in the Ethics Ordinance.

### GENERAL PROHIBITION

- ❖ The Ethics Ordinance prohibits a City Official from participating in a municipal decision if a party to that decision has given the City Official \$500 or more within the past twelve months.
- ❖ If a client has paid you \$500 or more within the past twelve months, that client is a source of income to you for purposes of this prohibition. You may not attempt to influence your own board or commission on behalf of such clients.
  - Note that your income also includes the community property interest you have in the income of your spouse or registered domestic partner. You have an economic interest in any source of \$1,000 or more to your spouse or registered domestic partner (your 50% community property interest would be \$500 or more) within the previous twelve months.
  - Thus, the prohibitions discussed in this Fact Sheet will also apply to clients who paid your spouse or registered domestic partner \$1,000 or more within the past twelve months.
- ❖ Influencing your own board or commission includes (a) voting on your client's matter; (b) discussing your client's matter with other members of your board or commission, before, during, or after a meeting; (c) making an appearance before your board or commission on behalf of your client, which includes making a presentation and answering questions about your client's matter; (d) preparing documents that are submitted to your board or commission on behalf of your client; and (e) assisting others who submit documents or appear before your board or commission on behalf of your client.

### ADDITIONAL CONSIDERATIONS

- ❖ Even if you disqualify yourself from discussing and voting on a matter involving your client, you are still prohibited from appearing before, and submitting documents to, your board or commission with regard to that matter. This prohibition includes assisting others "behind-the-scenes" on matters involving your client if that matter will come before your board or commission.
- ❖ Documents you have prepared for a client may not be submitted to your board or commission, even if your name does not appear on the document. In other words, you may not ghostwrite a document for submission on behalf of your client.

- ❖ You may not avoid the prohibitions discussed in this Fact Sheet by hiring someone else, or associating with another firm, in order to have another person to present your documents to your board or commission.
- ❖ A partner or employee of your firm is not subject to the prohibitions outlined in this Fact Sheet. Such persons may represent a client before your board or commission (and may use the firm's letterhead that includes your name). You are, however, prohibited from assisting anyone, including a partner or employee of your firm, who is presenting the client's matter to your board or commission. In other words, you may not help the partner or employee by making suggestions, giving advice, or editing a document that will come before your board or commission. A document you've authored, co-authored, or edited on behalf of a client may not be submitted to your board or commission, even if someone else in the firm signs it.
- ❖ If you are a "high level filer," note that when you are disqualified from participating in a decision because the decision involves your client, you must identify that interest at any meeting where the client's matter is being considered, and then you must leave the room while the matter is discussed and voted upon. (High level filers include members of the Planning Commission, Funds Commission, Retirement Board, San Diego Data Processing Corporation Board, Defined Contribution Plan Board, and the Ethics Commission.)

## **COMMUNICATIONS WITH STAFF**

The above prohibitions extend beyond the scope of the individuals serving on your board or commission; they also apply to the City staff members who work with your board or commission. Such staff members are, in essence, a part of your board or commission. They play an integral role in the business of your board or commission by reviewing projects, making recommendations, rendering advice, making approvals, or otherwise assisting in the processing of matters.

- ❖ Boards and commissions often direct staff actions and prioritize staff projects, and there is generally a close working relationship between a City body and its staff. As a result, undue influence or pressure can be created when a board or commission member communicates with staff members on behalf of a client.
- ❖ You are prohibited from discussing a client's project with any staff member assigned to work on that project for your board or commission. Such contacts would constitute an unlawful use of your official position to influence a municipal decision. This activity is prohibited even if your client's project isn't scheduled to be heard at a formal meeting of your board or commission.
- ❖ For example, the City staff members assigned to support the Historical Resources Board are responsible for reviewing proposed alterations to historic properties to determine whether such alterations will comply with applicable standards. Members of the Historical Resources Board may not contact City staff regarding the alterations sought by their clients, even though these decisions are made by staff and are typically not reviewed by the Board.
- ❖ Communications with staff members are prohibited even after a project has been approved by your board or commission. Because staff review, approval, and implementation of board decisions are fundamental parts of the overall decisionmaking process, such communications would be unlawful regardless of whether the matter is scheduled to be heard again by your board or commission.

- ❖ Note that the City’s Planning Commission includes City staff in the Planning Department as well as employees in other City departments who are involved in the business of the Planning Commission. A Planning Commissioner may not communicate with any such individuals working on a client’s project as long as the matter falls within the purview of the Planning Commission.
- ❖ This prohibition does not extend to the staff working for other City bodies on matters unrelated to your board or commission. If your client’s project is not subject to the purview of your board or commission, then you may communicate with the staff members associated with the project so long as it is clear to those individuals that you are not acting on behalf of your agency. For example, a member of the Historical Resources Board may communicate with Planning Commission staff with regard to a client’s project that has nothing to do with the Historical Resources Board so long as the member does not use his or her Board title or otherwise indicate that he or she is acting on behalf of the Board.

## EXCEPTIONS

There are a number of exceptions to the general prohibition, including:

- ❖ “Personal Interest” exception: as a member of the general public, you may represent your own personal interests before your board or commission. Personal interests include (a) interests in real property owned by you or your immediate family; (b) business entities owned by you or immediate family; and (c) business entities over which you or your spouse exercise direction and control.
- ❖ “Technical Documents” exception: you may prepare architectural, engineering, or similar type drawings and other technical submissions for use by a client in connection with a matter that comes before your board or commission.
  - This exception allows you to have contact with the staff of your board or commission, but only to the extent necessary to process your drawings or technical submissions.
  - In order for a narrative document to qualify for this exception, it must be limited in its scope to employing objective methodologies, principles, techniques, standards, or specialized knowledge within the fields of architecture or engineering, or of a similar nature.
  - A narrative document that advocates a position or provides more than an analysis limited to technical factors will not fall within the exception.
- ❖ “Design Review Committee” exception: If you serve on a design or architectural review committee, you may appear before that committee to present your drawings or submissions that are of an architectural, engineering or similar nature if: (a) the committee’s sole function is to review these types of plans and make recommendations concerning such plans to the Planning Commission or other agency; (b) your committee is required by law to have members who are architects, engineers, or persons in related professions, and you were appointed to the body to fulfill that requirement; and (c) you are a sole practitioner.

For additional information, please contact the Ethics Commission at (619) 533-3476.